

Serial No: 10/786,802

Docket No: 2002-0319

REMARKSPursuant to MPEP §706.07(a)Any Further Office Action Rejecting Unamended claimsCannot Be Made FINAL

If any unamended claim in this application is rejected on newly cited prior art in any next Office action, that Office action CANNOT BE MADE FINAL. The examiner's attention is directed to MPEP §706.07(a), stating that

[A] second or any subsequent action on the merits in any application ...will not be made final if it includes a rejection, on newly cited art... of any claim not amended by applicant or patent owner in spite of the fact that other claims may have been amended to require newly cited art.

Note, for example, that the amendment to independent claim 8 was made only to make more explicit what the word "each" refers to in line 12 so that this amended cannot in good faith be deemed to be an amendment that necessitated the citation of new art.

Moreover, no amendment has been made to independent claim 13.

Telephone Interview

This response is accompanied by a signed version of an "Applicant Initiated Interview Request Form" previously submitted to Examiner Hailu. The interview in question ("Interview") was held on 07/09/2009. The substance of the Interview was a presentation by the undersigned of the points noted in the Interview Request Form.

Prior Art

In a telephone conversation between the undersigned attorney and Examiner Vu on 07/21/2009, Examiner Vu stated that the claims were directed to allowable subject matter in view of the cited prior art based on the arguments presented in the

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Interview Request Form. The substance of those arguments had been made by applicants in prior papers filed during the prosecution of this application. To repeat, in summary, it is noted that

applicants claim (e.g. in claim 1) that an available bandwidth message is sent when particular thresholds are crossed. These are fixed bandwidth thresholds that are independent of the amount of bandwidth available for the link at a given time. Dolganow's thresholds for sending messages are NOT independent of the amount of bandwidth available for the link at a given time. Rather, they are based on a percentage of the last advertised bandwidth value. Thus Dolganow's thresholds are DEPENDENT, NOT INDEPENDENT, of the amount of bandwidth available for the link.

Moreover, McLean may have thresholds that are INDEPENDENT of the amount of the bandwidth available for a link. However, those thresholds do not relate to thresholds for determining when an available bandwidth message is to be sent. Therefore, combining the teachings of Delano and McLean does not result in an arrangement which advertises an amount of available bandwidth in response to the available bandwidth having crossed thresholds that are independent of the link's then-available bandwidth.

Rather, the sending of available bandwidth messages (advertising) in any combination of Dolganow with McLean would necessarily still use Dolganow's scheme for deciding when to send them.

The fact that it might be obvious to use McLean's thresholds in Dolganow for one purpose—namely for the reasons cited by the examiner—does not render it obvious to use McLean's thresholds for all purposes. Since McLean is totally silent about the sending of bandwidth advertising messages, there is no basis to assert that the person of ordinary skill would be led by anything in McLean to modify Dolganow's percentage-based scheme for determining when to send such messages.

Applicants are NOT saying that there is no motivation to combine. Applicants are saying that any obvious combination motivated by the teachings of McLean would not have any affect on the criteria for sending available bandwidth messages.

### Claim Language

In the Interview, and also in a follow-up conversation with Examiner Hailu on 07/22/2009, it was indicated by the examiners that certain phraseology in claims 1 and 8 was believed unclear.

The language in claim 1 that was deemed to be unclear has been cancelled. Thus the objection to claim 1 in terms of any unclarity has been obviated. Moreover,

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the substance of the recitations of claim 2 have been incorporated into claim 1. Claim 1, as amended, distinguishes the invention from the cited prior art because, as recited in amended claim 1, the cited prior art does not teach that the bandwidth thresholds used for determining when to send an available bandwidth message are each a function of the discrete bandwidth amounts in which the communication network allocates bandwidth to circuits. This, indeed, was the essence of the arguments presented by the undersigned attorney during the Interview relative to the cited prior art.

Claim 8 has been amended to make even clearer that the word "each" in line 12 refers to the "available bandwidth messages" recited earlier in line 12.

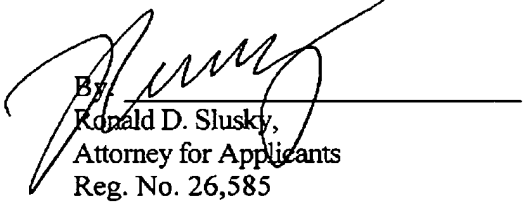
**"Housekeeping" Amendments**

Claim 2 has been cancelled since the substance of its limitations have been incorporated into its parent claim 1.

Claims 3 and 4 have been amended to depend from claim 1 rather than cancelled claim 2.

Claim 17 has been amended to exclude claim 2 from the claims listed therein.

Respectfully submitted,  
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